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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2019

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P (MD) No. 22 of 2019

Venkatesan

... Petitioner

Vs.

1. State of Tamil Nadu, represented by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2. The District Collector and
District Magistrate,
O/o the District Collector and
District Magistrate,
Ariyalur District, Ariyalur.

3. The Superintendent,
Central Prison, Tiruchirappalli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records in detention order passed in Cr.M.P.No.33 of 2018, dated 26.12.2018, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Venkatesan, S/o. Krishnamoorthi, male, aged 24 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

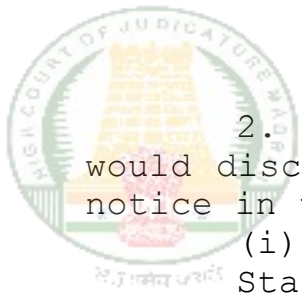
For Respondents : Mr.K.Dinesh Babu,

Additional Public Prosecutor.

ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J)

The detenu himself is the petitioner and challenging the impugned order of detention, dated 26.12.2018, passed by the second respondent, under Section 3(1) of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) and branded him as 'Goonda' in Cr.M.P.No.33 of 2018, has filed the present Habeas Corpus



2. A perusal of the grounds of detention, dated 26.12.2018 would disclose among other things that the detenu came to adverse notice in the following eight cases:-

(i) **Cr.No.248 of 2015** on the file of Udayarpalayam Police Station under Section 380 I.P.C.

(ii) **Cr.No.679 of 2016** on the file of Jayankondam Police Station under Sections 457 and 380 I.P.C.

(iii) **Cr.No.30 of 2017** on the file of Udayarpalayam Police Station under Sections 457 and 380 I.P.C.

(iv) **Cr.No.310 of 2017** on the file of T.Palur Police Station under Sections 457 and 380 I.P.C.

(v) **Cr.No.337 of 2017** on the file of T.Palur Police Station under Sections 457 and 380 I.P.C.

(vi) **Cr.No.100 of 2018** on the file of Irumbulikulurichi Police Station under Section 174 Cr.P.C @ into Section 302 I.P.C.

(vii) **Cr.No.437 of 2018** on the file of Ariyalur Police Station under Sections 457 and 380 I.P.C.

(viii) **Cr.No.455 of 2018** on the file of Ariyalur Police Station under Sections 454 and 380 I.P.C.

3. It is further stated in the grounds of detention that the defacto complainant viz., one Elaiyaraja, S/o.Periyasamy, who is a resident of Venkatakrishnapuram, Ariyalur Taluk and District, lodged a complaint on the file of Ariyalur Police Station on 01.12.2018, alleging that after finishing his work, while he was returning to his Village at about 05.30 p.m., he was waylaid by the detenu and the complainant was asked to part with the hands in his part and when the defacto complainant refused, the detenu abused him in unparliamentary words and also threatened him with dire consequences and also brandished a knife and asked him to part with the money and also threatened to inflict knife injuries and forcibly taken away a sum of Rs.570/- and that the defacto complainant raised an alarm, the public nearby gathered and they were also threatened with dire consequences and taking advantage of the situation, the detenu fled away from the scene of crime.

4. Ariyalur Police Station, on receipt of complaint from the defacto complainant, registered a case in Crime No.453 of 2018 under Section 392 read with 397 I.P.C., and investigation is on. The detenu was arrested on 02.12.2018 and subsequently, he was produced before the Court of Judicial Magistrate No.I, Ariyalur and he was ordered to be remanded to judicial custody on 14.12.2018 and his remand period was extended till 27.12.2018.

5. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same,



the present Habeas Corpus Petition has been filed by the petitioner.

6.The learned Counsel appearing for the petitioner would draw the attention of this Court to paragraph No.5 of the impugned detention order and would submit that the detenu is in custody in connection with a ground case and admittedly, the detenu has not filed any application for bail and in order to arrive at a subjective satisfaction it is stated that the detenu is likely to come out on bail and would indulge in such activities which are prejudicial to the maintenance of public order. However, no material whatsoever has been placed and in the absence of such vital material, the subjective satisfaction arrived at by the detaining authority in this regard, is purely vitiated and hence, prays for quashment of the impugned order of detention.

7.Per contra, the learned Additional Public Prosecutor would submit that the detaining authority, after due and proper application of mind, has rightly clamped the order of detention and hence, prays of dismissal of the Habeas Corpus Petition.

8.This Court has considered the rival submissions and also perused the materials placed before it.

9.As rightly pointed out by the learned counsel appearing for the petitioner that for deriving at the Subjective Satisfaction as to the real imminent possibility of the detenu coming on bail and indulging in activities in ground case which are prejudicial to the maintenance of public order and peace and no material whatsoever has been placed as to derivation of subjective satisfaction and in the absence of such a vital material, the subjective satisfaction arrived at by the detaining authority, is wholly vitiated and therefore, the impugned order of detention is liable to be quashed.

10.In the result, this Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.33 of 2018, dated 26.12.2018 passed by the second respondent, is quashed and the detenu namely Venkatesan, S/o.Krishnamoorthi, is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

Sd/-

Assistant Registrar ()

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To

- 1.The Principal Secretary to Government,
Rep. By the State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The District Collector and
District Magistrate,
O/o the District Collector and
District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government
Public(Law and Order)
Fort St.George, Chennai-9.
- 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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H.C.P(MD)No.22 of 2019
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